

ALVA F. MUSE and  
BARBARA J. MUSE

IBLA 76-793

Decided April 11, 1977

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting appellants' application for renewal of Small Tract Lease, Oregon 04590.

Affirmed.

1. Small Tract Act: Renewal of Lease

The filing of an application to lease under the Small Tract Act does not vest any legal right or interest in the applicant, for it is within the discretion of the Secretary whether or not to exercise his authority to lease the land.

APPEARANCES: Ervin B. Hogan, Esq., Medford, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Alva F. Muse, and his wife Barbara J. Muse, appeal from a decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting their application for renewal of their Small Tract Lease, Oregon 04590. Appellants took up residence upon the parcel in question in March 1965, having taken an assignment of the lease which was originally issued by BLM in July 1955. Appellants allege the construction of valuable improvements on the tract and maintain that, upon their entry, they paid the previous lessee the sum of \$ 4,500 for his improvements to the property. Appellants also point out that they have improved the property by the installation of a mobile home on the premises, an action which BLM claims is in violation of a lease provision requiring that "substantial improvements be made in accordance with plans filed." BLM also contends that the lease property has been maintained in a less than satisfactory condition, although appellants point out that all disorderly conditions on the premises have been corrected since the date of the decision below.

In addition to their avowal that all unsatisfactory conditions on the property have been rectified, appellants state that any disorderly conditions on the lease tract were the result of illnesses undergone by Alva Muse who suffered a stroke in December 1975 and Barbara Muse who was hospitalized for a herniated lumbar disc in the fall of 1976. Appellants challenge the State Office finding that the lease tract was being used for commercial livestock purposes and state that the local BLM office, in March 1972, granted them permission to improve the property by the installation of a mobile home.

Finally, appellants contend that the denial of their lease application, with the attendant change in their living situation, will result in severe hardship to them and that such action could result in the further endangerment of their health. To buttress this claim, appellants have appended to their statement of reasons letters from two Medford, Oregon, area physicians who state that Mr. Muse, especially, is in a precarious state of health and should not be forced to move at this time.

[1] At the time that appellants' predecessor! in! interest was granted a lease under the Small Tract Act, the applicable regulation (43 CFR 257.15 (1962)) concerning lease renewals read as follows:

§ 257.15 Renewal of lease. (a) An application for renewal of a lease must be filed on Form 4-775a in duplicate with the office mentioned in § 257.6 (a) prior to the expiration of the lease. A renewal in the form of a new lease will be granted only if it is determined that a new lease should issue and that the requirements of paragraph (b) or (c) of this section have been met. \* \* \*

(b) Where the land has been classified for lease only, renewals will be approved only if the lessee has constructed satisfactory improvements on the tract appropriate to the type of use for which the lease originally issued, such as a substantial and presentable dwelling suitable for year! round or seasonal use where the land was classified for residence purposes.

The wording of this regulation obviously leaves a wide degree of discretion with BLM, as it is that bureau which determines "whether a new lease should issue" (emphasis added) within the meaning of the regulation. We have held in the past, moreover, that the filing of an application to lease under the Small Tract Act does not vest any legal right or interest in the applicant, for it is within the discretion of the Secretary whether or not to exercise his authority to lease the land. 1/

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1/ Harold and Irene Kyllonen, 16 IBLA 86, 81 I.D. 364 (1974).

While we are not unmindful of appellants' medical problems, we can find no flaw in the legality of BLM's decision rejecting appellants' lease renewal application. The State Office decision appears to consider and weigh all of the relevant factual and legal considerations. Our review of the case impels us to the same conclusion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

